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CHAIRMAN  
GEORGE GOLIE  
DOUG MOOD  
BRAD NEWMAN  
MARK NOENNIG  
PAUL SLITER

## Montana Legislative Council

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June 24, 2002

### MINUTES

Room 102, State Capitol  
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

**Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

#### **COMMITTEE MEMBERS PRESENT**

Sen. Tom Beck (Chairman)  
Rep. Kim Gillan (Vice-chairman)  
Sen. Vicki Cocchiarella  
Sen. Mack Cole  
Rep. Dan McGee  
Rep. Doug Mood  
Rep. Mark Noennig

#### **COMMITTEE MEMBERS ABSENT**

Sen. Chris Christiaens  
Sen. Steve Doherty  
Sen. Fred Thomas  
Rep. George Golie  
Rep. Brad Newman

#### **STAFF PRESENT**

Lois Menzies, Executive Director, Legislative Services Division  
Todd Everts, Director, Legislative Environmental Policy Office  
Karen Berger, Financial Services Manager, Legislative Services Division  
Leanne Kurtz, Research Analyst, Legislative Services Division  
Connie Erickson, Research Analyst, Legislative Services Division  
Hank Trenk, Director, Office of Legislative Information Technology  
Lisa Mecklenberg Jackson, Legislative Librarian, Legislative Services Division

## **AGENDA & VISITORS' LIST**

Agenda (ATTACHMENT #1)

Visitors' List (ATTACHMENT #2)

## **COMMITTEE ACTION**

- Approved minutes of the March 25, 2002, meeting.
- Approved drafting legislation requested by the Office of Budget and Program Planning.
- Directed the LSD Executive Director to work with the other Legislative Branch staff directors to ensure a voluntary branchwide spending reduction for FY 2003.
- Approved an additional \$1,700 for the Education and Local Government Interim Committee.
- Approved an additional \$9,000 for the Revenue and Transportation Interim Committee.
- Approved drafting the 2003 feed bill, Code Commissioner bill, and a bill to clarify the role of standing committees during the interim.
- Approved allocating up to \$12,000 in general fund money to the Transition Advisory Committee to cover salary and expenses for legislators and expenses for staff through January 1, 2003.

## **CALL TO ORDER, ROLL CALL, MINUTES**

The meeting was called to order at 10:00 a.m. by Sen. Beck. Roll call was noted (ATTACHMENT #3) with all members present except for Sen. Christiaens, Sen. Doherty, Sen. Thomas, Rep. Golie, and Rep. Newman who were excused. The Council approved the minutes of the March 25, 2002, meeting.

## **REVIEW OF AGENCY LEGISLATION**

**Lois Menzies, Executive Director, Legislative Services Division**, presented to the Council the *Procedure for Review, Request, and Drafting of Agency Legislation* as well as a brief written description of the legislation requests from the Office of Budget and Program Planning (OBPP) (EXHIBIT #1).

**Chuck Swysgood, Director, OBPP**, reviewed for the Committee the bill draft request regarding emergency and disaster appropriations as detailed in exhibit #1.

Rep. McGee asked when the emergency spending authority was established at \$12 million. Mr. Swysgood said that the spending authority was increased to \$12 million during the 1995 or 1997 session.

Sen. Cole asked if an increase to \$25 million would be adequate. Mr. Swysgood said that, based upon previous events, he believes the amount would be adequate.

Rep. Noennig asked what happens if there is excess money in the fund. Mr. Swysgood said that it is not a fund, so there is not an appropriation. He said that the statute gives spending authority to the Governor. Rep. Noennig asked if the spending authority is included when determining the ending fund balance. Mr. Swysgood said no.

Sen. Beck asked for the definition of an emergency. Mr. Swysgood said that an emergency is an unforeseen event; he said that prison riots could be considered an emergency, but prison overcrowding may not.

Sen. Cocchiarella asked if the main difference between the revenue estimates from the OBPP and the Legislative Fiscal Division was the cost of fighting fires. Mr. Swysgood said that \$7 million of the \$13 million difference between the OBPP and the LFD report was directly related to potential fire costs.

Sen. Cocchiarella said that the state does not have a mechanism for funding this expenditure. Mr. Swysgood said that it is general fund money that comes from the general fund balance. He said that that is why the state requires a higher general fund balance than the minimum necessary to make up for the potential loss.

Rep. McGee asked if the issue of homeland security was considered for this legislative request. Mr. Swysgood said no.

Sen. Beck asked if it would be more appropriate for the bill to come before the Finance Committee rather than the Council. Mr. Swysgood said that since the OBPP is not attached to any specific interim committee this is the process that the OBPP has to have bills introduced. He said that the OBPP is still responsible for finding sponsors for the bill.

**Jane Hamman, OBPP**, reviewed for the Committee the agency request regarding potential legal challenges in implementing provisions of Title 17, chapter 7, as detailed in exhibit #1. She said that they may also add an amendment regarding interagency loans.

Sen. Beck asked about legal questions raised regarding interentity loans. Ms. Hamman said that when Bob Marks was Speaker of the House, he had requested an Attorney General's opinion concerning a general fund loan to pay for fires. She said that the issue for that particular general fund loan was a budget amendment under Title 17, chapter 7, part 4, of the MCA. Ms. Hamman said that she believes that there are different circumstances at this point in time. She said that OBPP is looking at using state special revenue authority that was appropriated in HB2 as the spending authority for general fund cash. She said that there is also to be a reasonable expectation of repayment. She said that legislative legal counsel believes that the Legislature cannot in HB 2 override the substantive law on loans. Ms. Hamman said that the OBPP would like to have this clarified in substantive law.

Ms. Hamman continued with her review and said that in trying to comply with 17-7-111(3)(f), MCA, in preparation for the 2003 session, there have been numerous questions regarding the state special revenue 5% requirement. She said that agencies do not want to prepare a 5% reduction for special revenue accounts. She said that OBPP is looking at removing that provision or creating exemptions from the provision.

Sen. Beck said that the argument was made that the 5% reduction should have been on the general fund and not on the special revenue funds. He said that the main task is to control the general fund not the special revenue funds.

Rep. McGee reminded members that the OBPP was coming before the Council to seek permission to have its bills drafted; this is not the time for extensive debates on the merits of each request.

Sen. Cocchiarella asked if the Council would have time to hear more about some of the legal issues regarding general fund loans. Ms. Menzies said that there is time during the drafting process for discussions between legislative legal counsel and the OBPP. She said that the Council is simply authorizing that the bill be drafted. Sen. Cocchiarella said that if the Council felt that the bill draft request was unconstitutional then she feels that the Council would not agree to have the bill drafted. Rep. Noennig said that one of the requirements of staff is to review a bill request to determine if it is constitutional or not.

Ms. Hamman continued her review and said that 17-7-140, MCA, is a placeholder that allows the approving authority to make budget reductions. She said that there have been a number of legal questions, but it is too early to tell the shape the bill may take. Ms. Hamman said that the OBPP is considering eliminating a portion of the federal mandate act that requires a report every biennium.

Sen. Cole asked if there was a report detailing state unfunded mandates. Ms. Hammond said that she does not know.

Rep. Gillan asked how much effort goes into producing the report. Ms. Hammond said that it is not labor-intensive to produce. Rep. Gillan commented that the report may be cumbersome to read in its current format.

Rep. Gillan and Sen. Cole requested copies of the report.

Ms. Hamman reviewed for the Council a proposal that is not contained in exhibit #1. She said that the OBPP would like to amend 17-7-402(1). She said that this section contains exemptions that allow budget amendments, and the OBPP would propose adding the Montana State Prison canteen. She said that they need spending authority in order to keep the canteen going.

Ms. Hamman also made reference to a list of 15 bills that are introduced each session by request of the OBPP. She asked that these bill requests be authorized for drafting and that certain bill numbers be reserved for these bills.

Sen. Cocchiarella moved to authorize the LSD staff to draft the proposals presented by the OBPP. The motion passed unanimously.

### **PROPOSED LEGISLATIVE BRANCH VOLUNTARY SPENDING REDUCTIONS**

Ms. Menzies reviewed for the Council a letter (EXHIBIT #2) from Mr. Swysgood requesting that the Legislative Branch voluntarily participate in the budget reductions pursuant to 17-7-140, MCA. She also reviewed a letter sent by the three Legislative Branch directors to Mr. Swysgood, which

stated that a plan would be presented to the Legislative Council, Legislative Audit Committee, and Legislative Finance Committee for a general fund revision for the Branch. She said that the Branch directors developed a plan that is equal to the average percentage reduction taken by Executive Branch agencies. Ms. Menzies reviewed the reduction plan for the Council.

Rep. Noennig moved that in the spirit of fair and cooperative response to the fiscal 2003 general fund deficit and in response to the request of the Budget Director in a letter dated April 19, 2002, the LSD Executive Director be directed to work with the other Legislative Branch staff directors to ensure a voluntary branchwide spending reduction that ensures a general fund revision for fiscal 2003 that is at least the same percentage as the average agency spending reduction percentage directed by the Governor for Executive Branch agencies in accordance with 17-7-140, MCA. The motion passed unanimously.

**Connie Erickson, Research Analyst, Legislative Services Division**, presented to the Council a request from the Education and Local Government Interim Committee for an additional \$1,700 to complete its interim work (EXHIBIT #3).

Sen. Cocchiarella moved to grant additional funds to the Education and Local Government Interim Committee. The motion passed unanimously.

**Leanne Kurtz, Research Analyst, Legislative Services Division**, presented to the Council a request from the Revenue and Transportation Interim Committee for an additional \$9,000 to complete its interim work (EXHIBIT #4).

Sen. Cocchiarella moved to grant additional funds to the Revenue and Transportation Interim Committee. The motion passed unanimously.

Sen. Cocchiarella commented on the fact that some legislators are being asked to serve on Executive Branch agency committees without reimbursement. She said that she would like to add this to the Council's next agenda to determine how requests from Executive Branch agencies will be handled in the future.

#### **FY 2004-05 BUDGET PROPOSALS**

Ms. Menzies presented to the Council the FY2004-05 Budget Proposals (EXHIBIT #5). Specifically, Ms. Menzies reviewed the budget proposals for:

- Television Montana (TVMT)
- Legislative Branch personnel officer
- State-Tribal Relations Committee funding
- Pacific NorthWest Economic Region funding
- Full payment of Council of State Governments annual dues
- Legislator participation in National Conference of State Legislatures and Council of State Governments

Sen. Cole asked about TVMT and how interim committees meetings would be broadcast. Stephen Maly, Legislative Research Analyst, said that mobile units would be deployed in the hearing rooms. He said that Helena Cable Television would distribute the proceedings.

Rep. Mood asked if there are 600 hours of interim committee meetings. Mr. Maly said yes.

Sen. Cole asked for an update on other distribution locations. Mr. Maly said that he is now looking at other cable television stations in Montana. He said that Bresnan Cable has purchased AT&T cable television in Montana, and he is hoping to develop a partnership with Bresnan. Mr. Maly said that Montana PBS will air a weekly review of the legislative proceedings.

Rep. Noennig asked about the personnel officer position and if there would be enough work to keep a person employed full time, what is the skill level needed for the position, and to whom would the person report. Ms. Menzies said she believes that there would be sufficient work branchwide to keep the person employed full time, that the salary would need to be competitive to hire a qualified person, and that the position would report to the LSD Director. Sen. Beck said that given the projected budget deficit for the next biennium, he is reluctant to pursue the new personnel officer position. Rep. McGee and Sen. Cole concurred.

Sen. Beck asked for discussion regarding the funding of the State-Tribal Relations Committee (STRC). He said that if the Legislature believes that this should be an interim committee, then it should be funded.

Rep. McGee said that he concurs with Sen. Beck. However, he said that he had opposed the creation of separate interim committee for state-tribal relations.

Sen. Cocchiarella said that she would hesitate adding additional duties to the already overburdened interim committees.

Sen. Cole and Rep. Noennig said that they believe the committee could be realigned with another existing interim committee. Ms. Menzies said that she will bring back additional information to the Council regarding interim committees workloads and budgets.

Rep. Gillan said that the Council would send a bad signal if we said that it was not going to fund the STRC. She said that she would follow Ms. Menzies suggestion and look at this committee in the context of the other committees.

Rep. Mood said that the STRC already exists and the Council needs to recommend that it be funded. The argument as to whether or not the STRC should be assigned to another interim committee should be discussed in the Legislature.

Sen. Beck said that the Council should pursue funding for the STRC in the FY 2004-05 budget. He asked Ms. Menzies to come back with some proposals for the September meeting.

Sen. Cocchiarella asked for a report regarding how interim committees are functioning and if they should be realigned.

Rep. McGee commented on the funding for the Pacific NorthWest Economic Region, Council of State Governments, and National Council of State Legislatures and asked for a proposal to be moved forward to the Legislature to debate the issue of funding.

Rep. Gillan asked for a survey of legislators and the meetings that they are attending. She said

that would help determine what memberships are being used and the value of the experience. Ms. Menzies said that she will try to obtain information from NCSL and CSG on Montana's participation in these organizations' activities.

#### **FY2004-05 LEGISLATIVE BRANCH COMPUTER SYSTEM PLAN**

**Hank Trenk, Director, Office of Legislative Information Technology**, presented to the Council the Legislative Branch Computer System Planning Council FY 2004-2005 Preliminary Computer Plan and Budget (EXHIBIT #8).

Rep. Noennig questioned the quality of the minutes and asked if that is why audio recording of the proceedings is a possibility. Ms. Menzies said yes. She said that the Computer System Planning Council is looking at very sophisticated recording equipment. However, there is still the question of the quality of the summary written minutes. Rep. Noennig said that he would like to discuss the issue further at the September meeting.

In reference to converting contracted services to FTE, Rep. McGee said that the Branch looks only at the salary and a computer for a new full time equivalent employee (FTE); these costs appear cheaper than contracted services. However, he would like proof that there truly is a cost savings when the Branch moves from a contract worker to an FTE.

Sen. Cocchiarella, Rep. Gillan, and Rep. Noennig said that they would like to pursue the Internet broadcasting of the legislative session. Rep. Noennig added that the Legislature should be allowed to debate the issue.

Rep. McGee asked if the infrastructure was in place in the Capitol for legislators to use their own computers. Mr. Trenk said yes.

Sen. Cocchiarella said that there should be equal opportunity for all legislators to participate in the process, not simply those who can afford the technology to gain access to the information.

#### **PROPOSAL TO REVISE FUNDING FOR TRANSITION ADVISORY COMMITTEE**

Via conference call, Sen. Thomas expressed to the Council concerns about the Transition Advisory Committee (TAC) being financed through private donations. He asked the Council to fund the Committee through the general fund and not private donations.

**Jeff Martin, Research Analyst, Legislative Services Division**, presented to the Council a request to have the TAC funded through the general fund (EXHIBIT #9).

Sen. Cole asked if the Committee needs to be a permanent interim committee. Sen. Thomas said that it is more likely today that the Committee will not need to be permanent. However, that should be a decision made by the next Legislature.

Mr. Martin said that the Legislature has expanded the life of the Committee from 2002 to 2007. Rep. Noennig said that if this is a committee of the Legislature, then he sees it as a violation of the law to fund it through private donations. Sen. Beck concurred and said that the TAC should be funded through the general fund.

Sen. Cocchiarella asked for a history of the formation of the TAC and how the Legislature came to seek outside funding. Sen. Thomas said that the House Appropriations Committee determined that it would like additional members from the community to serve on the Committee. In addition, the House Appropriations Committee asked the community members to fund the activities of the Committee. Sen. Cocchiarella asked if this was part of the "final deal" as the bill left the House. Sen. Thomas said yes. Sen. Beck concurred.

Sen. Noennig asked if \$35,000 is being requested for the balance of the current interim. Mr. Martin said that the \$35,000 is the FY 2004-05 budget calculated for the Committee if it were to be funded at the same level as other interim committees.

Rep. McGee asked how much of the donated funds have been spent. Mr. Martin said \$28,000. Mr. Martin said that the total amount of the remaining available resources to the Committee is approximately \$65,000. Rep. McGee asked the Council to take the remaining resources and return them to the entities that have made donations this year. He said that the Council should then authorize payment out of the Council's contingency fund for remaining interim activities.

Rep. McGee said that since this questionable funding situation has been brought before the Council, it is appropriate for this Council to take immediate action and rectify the situation. Sen. Beck concurred.

Rep. Noennig said that there are still expenses for nonlegislative members that could be paid out of the balance of the fund. Rep. Noennig asked Mr. Martin for the amount of funds needed if non-legislative members were still reimbursed from the fund. Mr. Martin said that he would have to further research the issue.

Rep. McGee moved that the Council direct that the TAC pay \$50,000 out of its current balance to Montana Power Company (\$25,000), NorthWestern (\$10,000), MECA (\$10,000), and PPL Montana (\$5,000). Further he moved that the remaining \$15,000 in the Committee account can be used to cover the expenses of any nonlegislative members. In addition, the Council will provide \$10,000 to the TAC for the balance of its interim activities.

Mr. Martin said that the Committee had \$65,000 at the beginning of the interim. However, they have expended \$28,000 with an additional \$11,500 for the contracted NCSL report.

Rep. McGee said that it is incumbent upon this Council to take immediate action and he is not comfortable waiting until September. He withdrew his previous motion but stated that the issue needs to be addressed before the end of the meeting.

After much discussion, Rep. Noennig moved to direct Mr. Martin to undertake the calculation for legislative expenses and to postpone action on this item until later on the agenda. The motion passed unanimously.

#### **TARGETED REDUCTION PLAN FOR FY 2004-05**

Ms. Menzies presented to the Council the 5% Base Budget Reduction Form (EXHIBIT #10) as required by 17-7-111(3)(f). She said that this report was submitted to the OBPP in May. She said that the reduction is to prepare all agencies for FY 2004-05.

### **LEGISLATIVE COUNCIL PROPOSED LEGISLATION**

Ms. Menzies reviewed for the Council current legislation requests (EXHIBIT #11). In addition to the proposals, Ms. Menzies asked that the 2003 feed bill be authorized for drafting. Rep. McGee moved that feed bill be drafted. The motion passed unanimously.

Rep. McGee asked about the time it takes to produce the second and third reading votes. Ms. Menzies said that she would provide that information at the September meeting.

Rep. Mood asked that a copy of the bill draft addressing Legislative Council appointments to interstate and international committees be provided prior to the September Council meeting. Ms. Menzies said that she would send a copy to members in advance of the next meeting.

Sen. Cocchiarella moved that the Code Commissioner bill be drafted. The motion passed unanimously.

Sen. Cocchiarella moved that the role of the standing committees during the interim be drafted. The motion passed unanimously.

### **UPDATE ON LEGISLATIVE INTERNSHIP PROGRAM**

Ms. Menzies presented to the Council an update on the legislative internship program (EXHIBIT #12). She said that a bill draft has been requested to provide a stipend for interns. She also said that the Council may be interested in pursuing legislation to improve the internship program and generate greater participation.

### **AMERICA'S LEGISLATORS BACK TO SCHOOL DAY**

Ms. Menzies said that she is continuing to gather information and attend meetings regarding NCSL's Legislators Back to School Day. She said that she will draft a letter to legislators on behalf of the Council urging their participation in this event.

### **UPDATE ON KUMAMOTO VISIT**

Ms. Menzies said that the 20th anniversary of the sister relationship between Montana and Kumamoto is fast approaching. She said that the Montana legislators will hold a lunch for the Kumamoto legislators.

### **OTHER BUSINESS AND DIRECTIONS TO STAFF**

Ms. Menzies presented to the Committee the Projected Session Calendar (EXHIBIT #13).

Sen. Beck asked for a "draft" watermark to be included on the calendar. Rep. Gillan moved that the draft calendar be amended to replace the words "Easter Break" with "Spring Break". The motion failed 2-5 with Rep. Mood, Rep. McGee, Rep. Noennig, Sen. Cole, and Sen. Beck voting no.

**Jim Kerins, Legislative Branch Personnel Officer**, presented to the Council the Legislative

Services Division Proposed Process for Gathering Input on Executive Director and Division Performance (EXHIBIT #14).

Mr. Martin presented to the Council the budgetary needs remaining this interim for the TAC (EXHIBIT #15). Rep. McGee moved that the Legislative Council make available up to \$12,000 for the TAC to cover salary and expenses for legislators and expenses for staff through January 1, 2003. The motion passed 6-1 with Rep. Gillan voting no.

Sen. Cocchiarella asked that the issue be placed on the September agenda for further discussion.

### **ADJOURNMENT**

The meeting adjourned at 4:30 p.m.

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